IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4.10.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.958 of 2007

Mrs.Anjalai .. Petitioner

Vs

1. State of Tamil Nadu,
   rep. by its Secretary,
   Prohibition and Excise Department,
   Fort St.George, Chennai-600 009.

2. The Commissioner of Police,
   Office of the Commissioner of Police,
   Egmore, Chennai-600 008 .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus call for the records relating to the Detention Order No. 104/BDFGISSV/2007 dated 17.3.2007 passed by the Second Respondent and set aside the Same and direct the Respondent to produce the body of the Detenu Chakkarai @ Chakarapani, male aged about 28 years S/o. Ramakrishnan, he detenu now confined in Central Prison Puzhal, Chennai before this Han'ble Court and set him at liberty as stated therein.

For Petitioner : No appearance

For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R
(Made by P.D.DINAKARAN,J.)

Aggrieved by the order of detention dated 17.3.2007 made in No.104/2007 passed by the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), detaining one Chakkarai @ Chakkarapani, son of Ramakrishnan,

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branding him as a Goobda, the petitioner, who is the mother of the detenu, filed the above petition seeking to quash the order of detention and to direct the respondents to produce the detenu, who is now confined at Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

2. On 23.2.2007 at 7.30 hours the police personnel attached to N4 Fishing Harbour Police Station were on special duty to secure the detenu in Crime No.14 of 2007. While so proceeding, on noticing the detenu standing near S.N.Chetty Road and Balakrishnan Road Junction along with some other accused, rushed to apprehend them at the spot. On noticing the rushing of the police party, the detenu and another accused took out a knife and threatened the police and further picked up soda bottles from the nearby shop and hurled the same against the police personnel. The public, who were at the spot noticing the atrocious activities of the detenu, ran hither and thither and traffic in that area came to standstill for sometime. Hence, a case in Crime No.15 of 2007, for offence under Sections 332, 336, 427, 307 and 506(2) IPC was registered on the file of N4, Fishing Harbour Police Station and during investigation the detenu was arrested on 27.2.2007 at 7.00 hrs, and produced before the XVI Metropolitan Magistrate Court, George Town, Chennai, who remanded him into juridical custody.

3. The second respondent, taking note of the above case as a ground case and finding that there are two adverse cases, having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The counsel on record on behalf of the petitioner has already withdrawn his vakalat and there is no representation on behalf of the petitioner. Though no one has appeared on behalf of the petitioner, we find that the order of detention is vitiated on the ground of delay in preparing the rejection order.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the Government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

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5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. Coming to the the case on hand, admittedly, objecting to the order of detention dated 17.3.2007, a representation was made on behalf of the detenu on 26.6.2007, which was received by the Government on 27.6.2007. Remarks were called for from the detaining authority on 28.6.2007, which was received by the detaining authority on 29.6.2007. The detaining authority, in turn, called for parawar remarks from the sponsoring authority on 2.7.2007 and on receipt of the same on 6.7.2007, it was sent to the Government on 10.7.2007 and received on 12.7.2007. Thereafter, the file was submitted on 13.7.2007 and it was considered by the Under Secretary and Additional Secretary on the same day. The file was considered by the Minister on 16.7.2007. However, the rejection letter was prepared on 25.7.2007, after a delay of nine days, which is not properly explained. Even taking note of the intervening holidays, viz., 21.7.2007 and 22.7.2007 (being Saturday and Sunday), the delay of seven days in preparing the order of rejection is admittedly unexplained and inexcusable. Thereafter, the order of rejection was sent on 26.7.2007 and served on the detenu on 27.7.2007.

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7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

9. In the instant case, there is delay of seven days in preparing the order of rejection, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition.

In the result, the order of detention dated 17.3.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

msk

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government
   Prohibition & Excise Department
   Secretariat, Chennai 9.

2. The Commissioner of Police,
   Office of the Commissioner of Police,
   Egmore, Chennai-600 008

3. The Superintendent of Central Prison
   Puzhal, Chennai.

4. The Public Prosecutor
   High Court, Madras.

5. The Joint Secretary to Government,
   Public (Law & Order)
   Fort St. George, Chennai-600 009.

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